

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

THE CITY OF BUFFALO,

Plaintiff,

-against-

SMITH & WESSON BRANDS, INC.; et
al.

Defendants.

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Case No. 1:23-cv-00066-FPG

Honorable Frank P. Geraci, Jr.

**DEFENDANTS’ REPLY MEMORANDUM OF LAW IN FURTHER
SUPPORT OF THEIR MOTION TO CONSOLIDATE**

Defendants respectfully submit this reply memorandum of law in further support of their Motion to Consolidate this case with *The City of Rochester v. Smith & Wesson Brands, Inc., et al.*, Case No. 6:23-cv-06061-FPG, for pre-trial purposes pursuant to Rule 42(a) of the Federal Rules of Civil Procedure.

ARGUMENT

Defendants’ May 12, 2023 Motion to Consolidate (ECF No. 109) sought to consolidate the cases filed by the City of Buffalo and the City of Rochester “for pre-trial purposes.” During pre-motion meet and confers, counsel for plaintiffs had opposed consolidation, and instead proposed to coordinate the cases, similar to multi-district litigation. In its response to the Motion to Consolidate, plaintiff now agrees that defendants “are correct that the complaints in these cases . . . present circumstances obviously warranting consolidation.” Pl.’s Resp. to Mot. to Consolidate (ECF No. 115) at 1-2. Defendants’ Motion to Consolidate should therefore be granted as unopposed.¹

¹ Plaintiff incorrectly states that defendants “suggest[] that these cases should be consolidated only for pretrial purposes” Pl.’s Resp. to Mot. to Consolidate (ECF No. 115) at 4. Although

In its response, plaintiff requests that this Court consolidate this case with the Rochester case for purposes of trial. Such request exceeds the scope of the relief sought in Defendants' Motion to Consolidate, and plaintiff did not file a cross-motion. Plaintiff's request is therefore improper because there is no pending motion seeking to consolidate these cases for purposes of trial.

More importantly, there is no reason to address consolidation for purposes of trial at this time when such issue is properly deferred to a future date, if necessary. The parties agree that this case should be consolidated for pre-trial purposes with the Rochester case based on the present circumstances. The future of these cases, however, including whether both of them will ever go to trial, is unknown. It is better to address consolidation for purposes of trial if both cases are ready to be tried based on the actual facts known at that time, than to consolidate them for purposes of trial based on speculations as to how these cases may progress.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant their motion to consolidate, issue an order consolidating this case with the Rochester case for all pre-trial purposes, direct that all further filings be solely filed electronically under Docket No. 1:23-cv-00066-FPG with a consolidated caption, and grant such other and further relief as it deems just and proper.

Dated: June 5, 2023

defendants only moved to consolidate the cases for pretrial purposes, they did not state that they oppose consolidating the cases for purposes of trial, but rather that such issue should be deferred. Defs.' Mem. of Law in Supp. of Mot. to Consolidate (ECF No. 109-1) at 2 n.1.

Respectfully submitted,

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Attorneys for defendants Glock, Inc; Hi-Point Firearms a/k/a Strassel's Machine, Inc.; Kel-Tec CNC Industries, Inc.; O.F. Mossberg & Sons, Incorporated; Springfield Armory, Inc.; SCCY Industries, LLC; Bangers, L.P. n/k/a Iron Valley™ Supply Co.; and RSR Group, Inc. and, for purposes of this motion, as liaison counsel for all defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2023, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically serve all counsel of record.

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